



## *City of El Paso – City Plan Commission Staff Report*

**Case No:** SUSU12-00019 Cimarron Unit 1 Replat A  
**Application Type:** Resubdivision Combination  
**CPC Hearing Date:** April 5, 2012  
**Staff Planner:** Raul Garcia, 915-541-4935, [garcia1@elpasotexas.gov](mailto:garcia1@elpasotexas.gov)  
**Location:** North of Northern Pass and East of Resler  
**Acreage:** 0.4211 acre  
**Rep District:** 1  
**Existing Use:** Single-family residence  
**Existing Zoning:** R-3A/c (Residential/condition)  
**Proposed Zoning:** R-3A/c (Residential/condition)  
**Nearest School:** Hut Brown Middle School (1.64 miles)  
**Nearest Park:** Cimarron Park (0.30 mile)  
**Park Fees:** N/A (Parkland requirements were met with the original plat and the applicant in not increasing density.)  
**Impact Fee Area:** Not in Impact Fee Area  
**Property Owner:** Ernesto A. Ochoa and Lluvia Torres  
**Applicant:** Ernesto A. Ochoa and Lluvia Torres  
**Representative:** CAD Consulting Co.

### **SURROUNDING ZONING AND LAND USE**

**North:** R-3A/c (Residential/condition)/ Single-family development  
**South:** R-3A/c (Residential/condition)/ Vacant  
**East:** R-3A/c (Residential/condition)/ Vacant  
**West:** R-3A/c (Residential/condition)/ Single-family development

**THE PLAN FOR EL PASO DESIGNATION:** G4 Suburban

### **APPLICATION DESCRIPTION**

With this replat the applicant proposes to remove a private open space easement that existed on the original plat. The applicant is providing a 10' wide pedestrian easement to a future park site to the south.

### **DEVELOPMENT COORDINATING COMMITTEE**

The Development Coordinating Committee recommends **approval** of Cimarron Unit One Replat A on a **Resubdivision Combination** basis subject to the following conditions and requirements:

### **Open Space Advisory Board:**

No recommendation. Neither a motion to approve nor a motion to deny was seconded.

**Planning Division Recommendation:**

Approval based on compliance with all sections in Title 19.

**Engineering & Construction Management-Land Development:**

We have reviewed subject plan and recommend Approval; Developer/Engineer needs to address the following comments:

- No Objection

**Department of Transportation:**

Transportation does not object to the proposed subdivision; but provides the following comment:

1. Additional driveways to be located on the proposed subdivision shall be coordinated with the Department of Transportation to ensure adequate sight visibility as the lot is located on a curve.

Note: All existing and/or proposed paths of travel (accessible sidewalks, wheelchair access curb ramps and driveways) within public rights-of-way shall follow the City of El Paso Design Standards for Construction and be ADA/TAS compliant.

**Parks and Recreation Department:**

We have reviewed Cimarron #1 Replat "A", a re-subdivision combination plat map which is composed of One Single-family dwelling lot; applicant is proposing to remove the "Private Common Open Space Area" with-in lot therefore, we offer Applicant / Developer the following comments:

1. Parks Department recommends against the removal of said "Private Common Open Space Area" since this area has been carefully planned /coordinated with the "Original Developer" and serves as the main pedestrian / walking connectivity route from the existing park located within Cimarron #1 and the two (2) proposed "Parks" & "School Site" within the adjacent subdivision known as Cimarron Sage #2 which will serve all the residents within this area.
2. Also, please note that per recorded covenants Instrument No. 20070089231 for the "Original Subdivision" known as Cimarron Unit One, per Chapter 19 – Changes in the Common Areas, Section 19.3 – Partition, the "Common Area" shall remain undivided, and no Person shall bring any action to partition of the "Common Area" with-out the written consent of all Owners and Mortgages which are the governing authority.
3. Any disturbance to this area needs to be stabilized, restored, and re-vegetated if required by the restrictive covenants.
4. Also, please note that construction drawing for the two (2) parks have been reviewed and approved since 08/01/2011

*(Comments are based on recommendations and not on non-compliance with a particular Section in the subdivision code. This plat meets the minimum requirements of the subdivision code.)*

**El Paso Water Utilities:**

1. EPWU does not object to this request

Water:

2. There is an existing 8-inch diameter water main within the 25-foot EPWU easement, the water main is located approximately 5-ft south from the northern property line.
3. EPWU records indicate a 3/4-inch water meter serving the subject property from the existing

8-inch diameter water main along Brays Landing Drive. The service address for this meter is 7372 Brays Landing.

**Sewer:**

4. There is an existing 8-inch diameter sanitary sewer main within the 25-foot EPWU, the sewer main is located approximately 15-ft south from the northern property line.

5. There is an existing 8-inch diameter sanitary sewer main extending along Brays Landing Drive that is available for service, the sewer main is located approximately 5 feet east from the center line of the right-of-way, but it changes alignment to 11-feet south from the center line.

**General:**

6. No building, reservoir, structure or other improvement, other than asphaltic paving (HMAC), shall be constructed or maintained on the above referenced EPWU-PSB easements without the written consent of EPWU-PSB. The Developer shall refrain from constructing rock walls, signs, buildings, or any structure that will interfere with the access to the PSB easements. There shall be at least 5-foot setback from the easement line to any sign or structure.

7. EPWU requires a new service application to provide service to the property. New service applications are available at 1154 Hawkins, 3rd floor and should be made 6 to 8 weeks in advance of construction to ensure water for construction work. A site plan, utility plan, grading and drainage plans, landscaping plan, the legal description of the property and a certificate-of-compliance are required at the time of application. Service will be provided in accordance with the current EPWU – PSB Rules and Regulations. The applicant is responsible for the costs of any necessary on-site and off-site extensions, relocations or adjustments of water and sanitary sewer lines and appurtenances.

**Stormwater:**

No comments received.

**El Paso Fire Department:**

No comments received.

**911**

No comments received.

**Sun Metro:**

No comments received.

**El Paso Electric Company:**

No comments received.

**Texas Gas Company:**

No comments received.

**El Paso Independent School District:**

No comments received.

**Additional Requirements and General Comments:**

1. Submit to the Planning & Economic Development Department – Planning Division the following prior to recording of the subdivision.
  - a. Current certified tax certificate(s)
  - b. Current proof of ownership

- c. Release of access document, if applicable
  - d. Set of restrictive covenants, if applicable
  - e. Deed for property to be dedicated as parkland.
2. Every subdivision shall provide for postal delivery service. The subdivider shall coordinate the installation and construction with the United States Postal Service in determining the type of delivery service for the proposed subdivision. In all cases, the type and location of delivery service shall be subject to the approval of the United States Postal Service.

### **Attachments**

1. Location map
2. Aerial map
3. Preliminary plat
4. Final Plat
5. Letter in opposition from the applicant's counsel
6. Application

ATTACHMENT 1



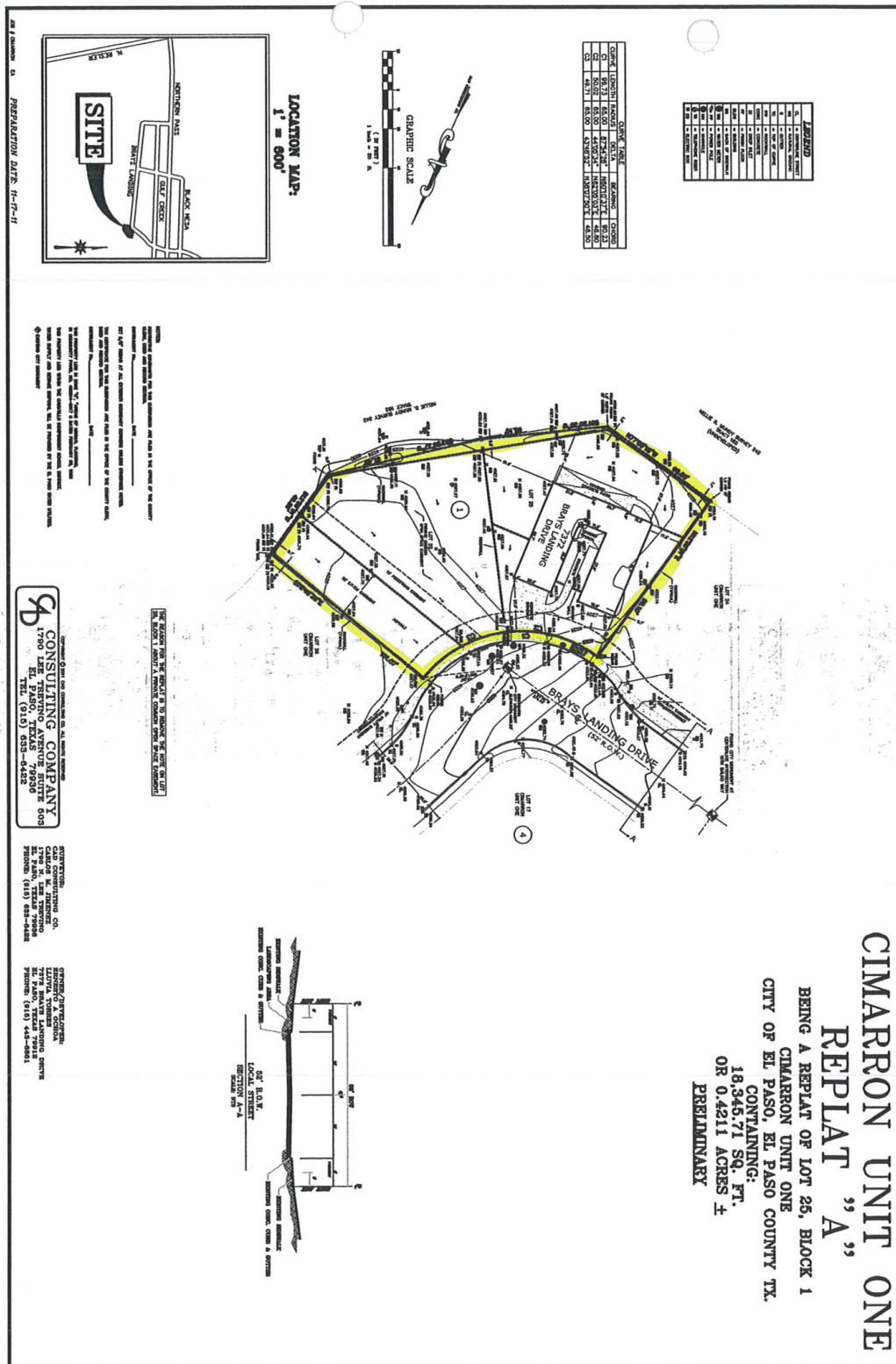


ATTACHMENT 2





## ATTACHMENT 3



## ATTACHMENT 4

[illegible]



## ATTACHMENT 5

### **HYATT & STUBBLEFIELD, P. C.** ATTORNEYS AND COUNSELORS

Wayne S. Hyatt (GA, NY, TX)  
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March 21, 2012

Mr. Lupe M. Cuellar  
City of El Paso, Texas  
2 Civic Center Plaza  
El Paso, TX 79901

Re: Proposed replat of Lot 25, Block 1, Cimarron Unit One

Dear Mr. Cuellar:

We represent Hunt Communities Holding, L.P. ("**Hunt**"), the developer of Cimarron in the City El Paso. It is my understanding that Ernesto A. Ochoa, a lot owner in Cimarron, has applied to the City for approval to replat his lot to remove a private common/open space easement. Hunt strongly objects to the proposed replat because removing the easement from the plat gives one reviewing the public record the impression that no easement exists, which will only lead to confusion and likely title problems down the road.

When Hunt filed the subdivision plat for Cimarron Unit 1, the City of El Paso ordinances did not permit subdividers to plat private parks or common open space reserves with a lot and block description. The only way Hunt could create areas for common enjoyment was by creating a "common open space easement" and making it part of a lot. The easement was shown on the recorded subdivision plat, which was approved by the City, and dedicated to the homeowners association, Cimarron Owners Association, Inc. ("**Association**"), for the benefit of the Association and its members, which are all of the homeowners in the Cimarron community. The dedication of that easement to the Association made the easement area a part of the Association's "Common Area" and "Area of Common Responsibility," which is the Association's responsibility to maintain, as described in Sections 3.1 and 9.2 of the Community Charter for Cimarron recorded in the El Paso County records as Document No. 20070089231 (the "**Charter**"). This Charter is a covenant running with the land that burdens all lots in the community and was in place prior to Mr. Ochoa's purchase of Lot 25. The relevant portions of the Charter are attached to this letter.

As I am sure you will agree, an easement may not be terminated without the consent of the holder of the easement. The Association is the holder, and thus, the easement may not be terminated without the Association's consent. The removal of the easement from the plat would not terminate the easement. Since the easement is a part of the Association's Common Area, the easement may not be terminated except through one of the methods described in Chapter 19 of the Charter. As described in Chapter 19, the methods for altering the Common Area and terminating the easement generally require either condemnation by a governmental authority or a vote of the members of the Association, neither of which has occurred in this case. Obviously,

Mr. Lupe M. Cuellar  
March 31, 2012  
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should the City's actions constitute a taking of the Association's easement, compensation would have to be paid for the taking.

We fail to see the benefit or purpose of removing the easement from the recorded plat if the easement will nonetheless continue in effect. What we do foresee, however, is a problem with the Association attempting to enforce its easement rights in the lot if future owners of this lot are misled into thinking there is no easement on the lot where the plat in the public record fails to properly show the easement. We also fail to see why the City would be interested in contributing to potential confusion and strife. We strongly urge the City to deny Mr. Ochoa's request that the private common/open space easement be removed from his lot.

If you have any questions, please do not hesitate to call me.

Sincerely,



Janet L. Bozeman

cc: Justin Chapman, Hunt Communities Holding, L.P.

573803/Corres

## ATTACHMENT 6



### CITY PLAN COMMISSION APPLICATION FOR RESUBDIVISION COMBINATION APPROVAL

DATE: \_\_\_\_\_

FILE NO. SUSU12-00019

SUBDIVISION NAME: CIMARRON UNIT ONE REPLAT A

1. Legal description for the area included on this plat (Tract, Block, Grant, etc.)  
LOT 25 BLOCK 1  
CIMARRON UNIT ONE

2. Property Land Uses:

|               | ACRES         | SITES    |                       | ACRES         | SITES    |
|---------------|---------------|----------|-----------------------|---------------|----------|
| Single-family | <u>0.4211</u> | <u>1</u> | Office                | _____         | _____    |
| Duplex        | _____         | _____    | Street & Alley        | _____         | _____    |
| Apartment     | _____         | _____    | Ponding & Drainage    | _____         | _____    |
| Mobile Home   | _____         | _____    | Institutional         | _____         | _____    |
| P.U.D.        | _____         | _____    | Other (specify below) | _____         | _____    |
| Park          | _____         | _____    |                       | _____         | _____    |
| School        | _____         | _____    |                       | _____         | _____    |
| Commercial    | _____         | _____    | Total No. Sites       | _____         | <u>1</u> |
| Industrial    | _____         | _____    | Total (Gross) Acreage | <u>0.4211</u> | _____    |

3. What is existing zoning of the above described property? R3AC Proposed zoning? \_\_\_\_\_

4. Will the residential sites, as proposed, permit development in full compliance with all zoning requirements of the existing residential zone(s)? Yes \_\_\_\_\_ No ✓

5. What type of utility easements are proposed: Underground \_\_\_\_\_ Overhead \_\_\_\_\_ Combination of Both \_\_\_\_\_

6. What type of drainage is proposed? (If applicable, list more than one)  
\_\_\_\_\_  
\_\_\_\_\_

7. Are special public improvements proposed in connection with development? Yes \_\_\_\_\_ No ✓

8. Is a modification or exception of any portion of the Subdivision Ordinance proposed? Yes \_\_\_\_\_ No \_\_\_\_\_  
If answer is "Yes", please explain the nature of the modification or exception \_\_\_\_\_

9. Remarks and/or explanation of special circumstances: \_\_\_\_\_  
\_\_\_\_\_

10. Improvement Plans submitted? Yes \_\_\_\_\_ No ✓

11. Will the proposed subdivision require the city to review and decide whether this application is subject to the standards in effect prior to the effective date of the current applicable standards? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please submit a vested rights petition in accordance with Section 19.47- Vested Rights (See Attached).

12. Owner of record ERNESTO OCHOA LUVIA TORRES 443-6861  
(Name & Address) (Zip) (Phone)

13. Developer \_\_\_\_\_  
(Name & Address) (Zip) (Phone)

14. Engineer CAD CONSULTING CO. 633-6422  
(Name & Address) (Zip) (Phone)

CASHIER'S VALIDATION  
FEE: \$1,083.00

OWNER SIGNATURE: Ernesto Ochoa Luvia Torres  
REPRESENTATIVE: ~~XXXXXXXXXX~~

NOTE: SUBMITTAL OF AN APPLICATION DOES NOT CONSTITUTE ACCEPTANCE FOR PROCESSING UNTIL THE PLANNING DEPARTMENT REVIEWS THE APPLICATION FOR ACCURACY AND COMPLETENESS.